Supreme Court, U.S.
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No. 98-1391

IN THE
Supreme Court of the United States

OCTOBER TERM, 1998

ANTONY ALEXANDER BLAREK, II, AND
FRANK V. PELLECCHIA,
Petitioners,

--against--

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE SECOND CIRCUIT

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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PETITIONERS' REPLY TO THE BRIEF FOR THE UNITED STATES IN OPPOSITION

1. The government studiously avoids meeting the petition for certiorari head on, declining to take a position on a critical question that this case presents: "whether RICO is violated by one who provides the leader of a drug trafficking enterprise with expensive goods and services for his personal consumption." Government's Brief at 6. The government asserts that the Petitioners "did not simply facilitate Santacruz's enjoyment of a lavish lifestyle," Government's Brief at 6, and cites, in support of this assertion, the Second Circuit's conclusion that there was evidence at trial that "Petitioners aided Santacruz' drug business by laundering large sums of drug money." Id.

The government's argument (which the Second Circuit adopted) should be rejected because it is circular: it rests on the premise that providing a drug trafficker with expensive goods and service, thus enabling him to enjoy his ill gotten gains, is itself "money laundering."[1] That this is so is patent from the government's response to the Petitioners' claim that they did not function as money launderers because the money they received -- wire transfers from outside of the United States -- had already been laundered. The government responds that, "To the extent the money received by Petitioners had already been laundered, however, Santacruz needed to convert the money into a form in which he could use it." Government's Brief at 7. This is just word-play. Petitioners did not "convert [Santacruz'] money into a form in which he could use it;" it was already in that form. Petitioners converted that money into goods and services for Santacruz. In other words, they helped him spend his money on luxury goods and professional services for his and his loved

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[1] Nothing in the Second Circuit's Opinion suggests that it repudiated that premise or affirmed the conviction on a narrower theory of money laundering.

ones' enjoyment.

When all is said and done, then, this case squarely presents the issue the government attempts to avoid. This conviction does not rest on proof that the Petitioners agreed to, or did, launder money for the Cali drug cartel within the meaning of the federal money laundering laws. It rests on the very broad, and very dangerous, theory that receiving money from, or spending money for, a drug trafficker in connection with a commercially reasonable buyer-seller or professional-client relationship itself constitutes "money laundering" that can support a RICO conviction. Because there is no reason to distinguish between drug traffickers and others whose criminal endeavors may be prosecuted under RICO, this case stands for the proposition that anyone who provides goods or services to a person he knows or has reason to know is engaged in criminal activities may be prosecuted for, and convicted of, RICO conspiracy on the theory that he helped that person enjoy the fruits of his crimes.[2] For that reason alone, certiorari should be granted.

2. The government concedes that there is a split in the Circuits as to the scope of conspiratorial liability under RICO, but insists that the split is not significant because neither the Ninth or Third Circuit has considered the issue of conspiratorial liability under RICO, since this Court's ruling in Salinas v. United States, 522 U.S. 52, 118 S. Ct. 469 (1997). The

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[2] The government misunderstands the significance of the jury's refusal to convict on the substantive RICO count. While it is true, as the government contends, that that acquittal may have been based on any number of grounds, in light of that acquittal it cannot be said that the jury found that either of the Petitioners – or anyone else – engaged in any of the substantive acts of money laundering set forth as predicate acts in the indictment's substantive RICO count.

government does not contend that the Circuits, with the exception of the Third and the Ninth, are completely in accord. As the Petition for Certiorari demonstrates, they are not.

Salinas itself does not resolve the question that has so divided the Courts of Appeals. Salinas rejected the proposition that a RICO conspirator must agree personally to commit two or more predicate acts, and reached that conclusion in reliance upon "well-established [conspiracy] principles." 522 U.S. at ___, 118 S. Ct. at 477. But neither the Salinas decision, nor general principles of conspiracy law, provide an answer to the question what an alleged co-conspirator must agree to in order to be guilty of RICO conspiracy. Indeed, Salinas itself can be read to support a narrow delineation of conspiratorial liability under RICO. Salinas, after all, confirms that, "The partners in the criminal plan must agree to pursue the same criminal objective ..." 522 U.S. at _____, 118 S. Ct. at 477 (emphasis added). Petitioners were charged with having conspired to conduct or participate in the conduct of an enterprise – the Santacruz faction of the Cali narcotics cartel. Yet it is farfetched in the extreme to infer from the evidence that was presented that these interior designers "agree[d] to pursue" the "same criminal objective[s]" held by Santacruz, that is, to traffic in drugs with him and his confederates.

Even if such an inference could properly be drawn, surely, it should not be assumed that the Salinas Court, which did not even mention Reves v. Ernst & Young, 507 U.S. 170 (1993), intended to eviscerate the Reves decision by blanketly approving prosecutions and convictions of individuals for RICO conspiracy, where the conspiratorial objectives have been fully realized but the individual could not, under Reves, be convicted of the substantive RICO offense.[3]

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[3] Under the sentencing guidelines, for sentencing purposes, there is no difference between conspiracy and the

Thus, the government's assertion to the contrary notwithstanding, Salinas does not "make clear" that the RICO conspiracy provision requires no "proof that the defendant agreed to operate or manage a criminal enterprise." Government's Brief in Opposition at 6. Salinas directs that general conspiracy principles be applied, but the application of those principles in the context of a multilayered RICO offense is hardly obvious, as the cases discussed in the Petition show.

Nor is there a compelling reason for the Court to wait until the Circuit Courts have all had a chance to consider this issue in light of Salinas. As the government's own brief shows, there is no case even pending before the Third Circuit which presents the question. Nor is there any guarantee that the question will be answered by the Ninth Circuit in United States v. Luong, No. 99-10009. Furthermore, even if there were no conflict in the Circuits, review by this Court would be warranted because permitting convictions for RICO conspiracy of those who could not be convicted of substantive RICO is fundamentally at odds with Reves, and, Petitioners submit, contrary to Congress' intent in enacting the RICO statutes.

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substantive crime which is the object of the conspiracy, unless the conspiracy does not come close to or reach fruition. See U.S.S.G. § 2X1.1(a), (b)(2).

CONCLUSION

For the reasons stated here and in the Petition for Certiorari, Petitioners respectfully request that the Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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